

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

ROBIN O. LYDA,

Plaintiff,

vs.

ERIC K. SHINSEKI,
SECRETARY OF THE
DEPARTMENT OF VETERANS
AFFAIRS AGENCY,

Defendants.

Cause No. CV 12-00049-BLG-RFC-CSO

ORDER DENYING MOTION FOR
APPOINTMENT OF COUNSEL
AND
FINDINGS AND RECOMMENDATIONS OF
UNITED STATES MAGISTRATE JUDGE TO
DENY MOTION TO PROCEED IN FORMA
PAUPERIS

Pending is Plaintiff Robin Lyda's Motion to Proceed in Forma Pauperis (*Court Doc. 1*) and proposed Complaint. (*Court Doc. 2*). Included in the Motion to Proceed in Forma Pauperis is a motion for the appointment of counsel (*see Court Doc. 1-1 at 1*).

The Court may permit indigent litigants to proceed in forma pauperis upon completion of a proper affidavit of indigency. *See* 28 U.S.C. § 1915(a). The court has broad discretion in considering an

application to proceed in forma pauperis. *Weller v. Dickson*, 314 F.2d 598 (9th Cir. 1963), cert. denied, 375 U.S. 845 (1963).

Lyda admits she is able to pay the costs of these proceedings but is asking to proceed in forma pauperis and for counsel because of the following information on a form from the United States Equal

Employment Opportunity Commission:

If you decide to file a civil action, and if you do not have or cannot afford the services of an attorney, you may request from the Court that the Court appoint an attorney to represent you and that the Court also permit you to file the action without payment of fees, costs, or other security.

(*Court Doc. 1-1, p. 2*). She states that any requested relief from this civil action would not begin to compensate her for the costs associated with attorney fees and court costs. (*Court. Doc. 1-1, p. 1*).

The in forma pauperis statute, 28 U.S.C. § 1915, permits the waiver of prepayment of fees and costs for litigants who are unable to pay the \$350.00 filing fee prescribed by 28 U.S.C. § 1914. Lyda is clearly able to pay the \$350.00 filing fee and therefore the motion to proceed in forma pauperis should be denied.

Lyda also requests counsel. The in forma pauperis statute allows

the Court to request an attorney to represent any person who is unable to afford counsel. 28 U.S.C. § 1915(e)(1). It appears that Lyda can afford counsel. In any event, her stated reason for requesting counsel is that the requested relief for this case would not cover the costs associated with attorney fees and court costs. This is not sufficient justification to appoint counsel to represent Lyda in this case.

Based upon the foregoing, the Court issues the following:

ORDER

The Motion for the Appointment of Counsel (*Court Doc. 1*) is denied.

RECOMMENDATIONS

1. The Motion to Proceed in Forma Pauperis (*Court Doc. 1*) should be denied.
2. Lyda should be given an opportunity to pay the full filing fee of \$350.00 and, if she fails to do so within the period of time set by the Court, the Clerk of Court should be ordered to close the file.

Because a pro se plaintiff is not entitled to file written objections to a magistrate judge's recommendation that an application to proceed

in forma pauperis be denied (*Minetti v. Port of Seattle*, 152 F.3d 1113, 1114 (9th Cir. 1998), the Clerk is directed to notify Chief Judge Cebull's chambers of the filing of this Order.

DATED this 24th day of April, 2012.

/s/ Carolyn S. Ostby
United States Magistrate Judge